

**MINUTES
of the
EIGHTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**November 9-10, 2015
Santa Fe Indian School and Room 322, State Capitol
Santa Fe**

The eighth meeting of the Indian Affairs Committee was called to order by Representative Sharon Clahchischilliage, co-chair, on November 9, 2015 at 10:12 a.m. at the Humanities Commons Room at the Santa Fe Indian School in Santa Fe.

Present

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Ted Barela (11/9)
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Cliff R. Pirtle (11/9)
Sen. Nancy Rodriguez
Sen. Benny Shendo, Jr. (11/9)
Rep. James E. Smith
Sen. William P. Soules

Absent

Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. D. Wonda Johnson
Rep. Georgene Louis
Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros
Rep. Patricia A. Lundstrom
Sen. Cisco McSorley
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar

Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Sen. George K. Munoz
Sen. Clemente Sanchez

(Attendance dates are noted for members not present for the entire meeting.)

Minutes Approval

Because the committee will not meet again this interim, the minutes for this meeting have not been officially approved by the committee.

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Michelle Jaschke, Researcher, LCS
Mark Edwards, Drafter, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Monday, November 9 — Humanities Commons Room, Santa Fe Indian School

Representative Clahchischilliage called the meeting to order at 10:12 a.m. and asked the committee members and audience members to introduce themselves, which they did.

Welcome and Status Update

Roy Herrera, superintendent, Santa Fe Indian School (SFIS), welcomed the committee to the campus. He said that the SFIS teaches grades seven through 12 and has nearly 700 students currently enrolled, with 500 living on campus. Most of the students come from New Mexico's 19 Indian pueblos, the Navajo Nation, the Mescalero Apache Tribe and the Jicarilla Apache Nation. Superintendent Herrera said that the SFIS has a day bus to help off-campus students with their commutes. Seventeen other tribes from around the country are currently represented in the student population.

Superintendent Herrera said the SFIS is a leader among federal Bureau of Indian Education (BIE) schools. Highlighting some accomplishments, he said that of the 183 BIE schools nationally, only two, including SFIS, were able to administer the online PARCC exams for their students. The 2014 graduating class earned \$3.5 million in scholarships, including six students who received the prestigious Bill and Melinda Gates scholarships. The SFIS has a high school graduation rate of over 82%, outpacing the statewide rate for New Mexico of 70%. Superintendent Herrera said that 90% of graduating seniors planned to pursue post-secondary education.

The current priority for the SFIS is to create a safer and more welcoming entrance for the school from Cerrillos Road. Superintendent Herrera said that the SFIS has been in discussions with the New Mexico Department of Transportation (DOT) and working with the City of Santa Fe about an entrance design. The plan is for the SFIS to donate some of its road frontage to create space for a dedicated turning lane into the school. He asked the committee to support a \$900,000 general obligation (GO) bond request for the first phase of the project.

In the ensuing committee discussion, a question was raised whether the Constitution of New Mexico would bar state funds from going to the school. Mark Duran, lobbyist for the SFIS, said that this is not an issue and that the SFIS has been on both the GO and severance tax bond funding lists for the last 12 years. A committee member noted that Cerrillos Road is part of the state road system and asked whether the project was in the state transportation planning process (STIP). Superintendent Herrera said that it was, but discussions with the DOT revealed that the STIP process would take about 10 years. A committee member suggested that the two phases

should be viewed as separate projects. Phase 1 of the project is for infrastructure work on the campus grounds and should seek GO bonds, and phase 2 is for the turnout on Cerrillos Road and should be included as an "enhancement" in the local transportation improvement plan (TIP). Phase 2 should seek severance tax bond funding through the capital outlay process. Superintendent Herrera said that the SFIS had been in discussions with the DOT District 5 engineer and would inquire about being put in the local TIP.

Superintendent Herrera said the federal Bureau of Indian Affairs (BIA) also would need to approve the project. He explained that the BIA maintains the infrastructure on the SFIS campus, while the BIE manages the education programs.

Motion

Upon a motion by Senator Martinez, seconded by Senator Soules, the committee agreed without objection to send a letter to the Legislative Finance Committee (LFC) to support GO funding for phase 1 of the SFIS project.

Office of the State Engineer (OSE) and Interstate Stream Commission (ISC)

Tom Blaine, state engineer, Deborah Dixon, P.E., director, ISC, and Amy Haas, general counsel, ISC, gave the committee the annual status report on proposed Indian water rights settlements as required by statute (Section 72-1-11 NMSA 1978). Three settlements are currently pending implementation: the Navajo Nation water rights settlement within the San Juan River adjudication; the settlement of the water rights for the Pueblos of Nambé, Pojoaque, Tesuque and San Ildefonso in the *Aamodt* adjudication; and the water rights settlement for the Pueblo of Taos in the Rio Pueblo de Taos/Rio Hondo *Abeyta* adjudication (known as the Taos settlement). The state entered into a settlement agreement with respective tribes for each of these settlements in 2005 and 2006, and federal authorizing legislation for each settlement was enacted in 2009 and 2010. A foundational element for each settlement is the construction of water delivery or utility infrastructure for the respective tribes that is to be paid for mostly with federal funding but requires some state matching funds (see OSE handout).

Navajo Nation Water Rights Settlement.

The presenters said that the foundational infrastructure for this settlement, the Navajo/Gallup water supply project (NGWSP), is currently under construction. The water supply for the project will come from the Navajo Reservoir on the San Juan River. The implementation of the settlement has two components: a legal process component and a funding/construction component. Within the legal component, a new environmental impact statement was completed for the project and federal authorizing legislation was enacted in 2009. In 2010, the state and the Navajo Nation entered into a conforming settlement agreement that included a partial final court decree. In 2013, the court issued two partial final judgments and decrees in the San Juan River adjudication, although four parties filed appeals to those rulings.

Within the funding and construction component, the state entered into a cost-sharing agreement with the federal government in 2011. The federal Bureau of Reclamation (BOR) estimates that the total cost of the NGWSP is \$1.66 billion, of which the state's share is \$50 million. The BOR is anticipated to credit approximately 75% of the \$40 million the state has already spent on water utility infrastructure for the Navajo chapters and the City of Gallup. In addition, the state has previously contributed \$13.6 million in direct funding to the NGWSP. Currently, the state is \$6 million from paying its obligation. However, any remaining balance will begin to be indexed in October 2016. The settlement agreement also has a clause whereby the state will seek \$10 million in federal funding for non-Indian irrigation systems in the San Juan River Basin, but receiving that funding is not a settlement requirement.

Ms. Haas said that Attorney General Patricia Madrid and Governor Bill Richardson represented the state in the 2005 settlement and Attorney General Gary King and Governor Richardson represented the state in the 2010 conforming settlement. Ms. Haas also said the state is waiting for the non-Indian irrigators to develop a plan with the BOR's Upper Colorado region. The ISC can then support the funding request, but the state is under no obligation if the funding is not appropriated by Congress.

A committee member asked if the OSE and ISC are going to make a separate budget request for the Navajo Nation water rights settlement. Ms. Haas said they have traditionally requested \$15 million for the water rights budget within the OSE each year to meet the state's obligations for all pending Indian water rights settlements instead of separating them out. She said that the ISC notes upcoming deadlines, such as the Taos settlement deadline for 2015, but how or whether to meet the obligation is left to the legislature.

Aamodt Settlement

In May 2006, the state, the City of Santa Fe, Santa Fe County and the Pueblos of Nambé, Pojoaque, Tesuque and San Ildefonso signed an agreement to settle the water rights claims for the four pueblos in the Nambé-Pojoaque-Tesuque (N-P-T) stream system. In 2010, federal legislation was enacted, and a conforming agreement was signed by the parties in 2013. The agreement has four central elements:

- 1) although the pueblos primarily have senior water rights, there are restrictions on when the pueblos may make a priority call on the N-P-T system;
- 2) aside from the amount of water allocated to the pueblos under the settlement, the federal government will acquire 2,500 acre-feet of water per year (AFY) for their economic development;
- 3) the federal government (the BOR) will construct a regional water system to deliver potable water within the N-P-T valley to the pueblo and non-pueblo communities. The

construction cost for the system will be shared by federal, state and county governments. The non-pueblo portion of the system is projected to deliver 1,500 AFY; and

4) there are incentives for non-pueblo residents currently on domestic wells to transfer to the regional system.

A committee member asked about a recent decision by Santa Fe County to suspend its cost share payments. In response, Tony Flores, deputy county manager, Santa Fe County, said that the county still supports the settlement, but wants to resolve right-of-way issues on county roads before resuming payments. He said that the BIA had sent a letter declaring to the county that some of its roads are trespassing on the lands of the Pueblo of San Ildefonso. He said the issue came up during the survey for placement of pipelines for the regional water system.

Asked by a committee member if the county's position would pose problems for the settlement, Ms. Haas emphasized that the state's financial responsibilities are considered separate from the county's. However, discussions are ongoing between the parties in an effort to keep the settlement on schedule. The settlement has no requirement for purchase of rights of way for the pipelines. The rights of way should be considered either a contribution made by the Pueblo of San Ildefonso or separate from the settlement.

Charlie Dorame, former governor of the Pueblo of Tesuque and chair of the Northern Pueblos Tributary Water Rights Association, commented that the right-of-way issue is about roads and would remain with, or without, the settlement. He asked for support for continuing funding of the water system so that it can remain on schedule to be completed by 2024.

James Rivera, former governor, Pueblo of Pojoaque, echoed Governor Dorame's statement saying that some activists are conflating the right-of-way and settlement issues to muddy the picture. He questioned whether anyone within the N-P-T valley would not understand the difference between the issues, as the OSE has held many local public meetings about the settlement since 2010.

Taos Settlement

Mr. Blaine said the funding is complete for this settlement. Ms. Dixon added that the budget request for water rights settlements would remain at \$15 million and that if the state can keep a \$15-million-a-year pace for the next five years, the remaining obligations for the *Aamodt* and Taos settlements will be complete.

A committee member noted that the projection for severance tax bond revenues for fiscal year (FY) 2017 is low and asked when the state's payments are due. Mr. Blaine said that the payment for the *Aamodt* settlement is due when construction begins, probably in 2018. For the Navajo settlement, it is due by the end of construction, but the balance is indexed after October 1, 2016. In the ensuing discussion, committee members raised the following points:

- there is urgency to pay the state's settlement shares early to avoid paying the indexing costs;
- the possibility exists to use general fund revenues for the settlements to avoid any severance tax complications; and
- a request should be made to the ISC and OSE for information on the economic multiplying effect of the federal funding for project construction for the settlements.

Report on Small Loan Regulation

Sunny Liu, analyst, LFC, gave a presentation on a draft study of the consumer lending industry in New Mexico. The study was requested by House Memorial (HM) 131 (2015). The study updated a report requested by HM 36 (1999). Mr. Liu interviewed representatives from 28 different business, governmental and consumer interest organizations for the study, and the Financial Institutions Division of the Regulation and Licensing Department contributed to the data collection for the report.

A major concern for consumer interest groups is the extent of rollover loans within the industry, and they recommend a cap on the effective annual percentage rate (APR) required of borrowers. Industry groups are concerned that capping loan rates will drive companies out of the market and result in limiting credit availability to many people. Industry representatives support disclosure of all loan terms to borrowers and expanded financial education, and they said that the state should wait until new federal consumer guidelines are finalized by the Consumer Financial Protection Bureau (CFPB) before taking any action.

Mr. Liu said the LFC study reviews the history of the small loan market in New Mexico and the status of loan regulation within other states. The study found that after the New Mexico Small Loan Act of 1955 was amended to add requirements for payday loans, the market trend has been that companies are issuing fewer payday loans and more installment loans. The report includes an overview of regulation proposals and a list of regulation efforts in other states, including a synopsis of an analysis of payday loan regulation in Colorado developed by the Pew Charitable Trusts.

In responding to committee questions, Mr. Liu said that there are no plans to include legislative recommendations. However, the study is still under refinement, and the LFC is continuing discussions with the various entities. He said that consumer interest and industry groups have some overlapping interests with regard to transparent transactions and protecting credit availability. Imposing rate caps has led the industry to leave some markets, but the LFC is working to define the distinctions between different loan instruments to clarify the data on that point.

A committee member asked if there is any analysis regarding the high-end APR rates, particularly on tax refund anticipation loan rates. Mr. Liu responded that the data sets are very limited. The Financial Institutions Division has difficulty getting the data from the industry, so there is not much for the LFC to analyze.

Mr. Liu said that the LFC had not set a time line to finalize the study, but it hopes to include the CFPB guidelines once they are finalized. Committee members recommended that LFC staff also review a 2013 study by the Center for Community Economic Development and attend a November 16, 2015 symposium by the National Center for American Indian Development as part of its effort to finalize the study.

Sheep Springs Navajo Chapter

Amber Krotty, delegate, Navajo Nation Council; Louise Charlie, vice president, Sheep Springs Chapter, Navajo Nation; and Sally A. Joe, secretary/treasurer, Sheep Springs Chapter, Navajo Nation, gave a presentation on two infrastructure projects the chapter is seeking this coming year. The Sheep Springs Chapter sits next to the Chuska Mountains north of Gallup and is accessed by State Highway 134. (Full project descriptions are in the Sheep Springs Chapter handout in the committee file.)

Ms. Joe said the first project is for construction of a regional multipurpose center. The center would be used: 1) as a place to promote the creation and sale of local artwork for economic growth; 2) to provide office space for the chapter; 3) as a recreation center for children for several Navajo Nation chapters; and 4) as an office for the Temporary Assistance for Needy Families (TANF) program. The land for the building site has been approved by the chapter, and two years ago the chapter received \$240,000 out of the Tribal Infrastructure Project Fund (TIF) for planning and design of the center. Construction is projected to cost \$5 million.

Responding to questions from the committee, Ms. Joe said that the all of the TIF funding for design of the regional center has been encumbered and the architect was expected to present the final design to the chapter on November 13, 2015. She also said the chapter is completing a proposal for 2016 TIF funding for construction and is looking at the possibilities for cost sharing from the chapter and the Navajo Nation.

Delegate Krotty said the second project request is for \$80,000 for a feasibility study for an earthen dam for irrigation. She said that the Navajo Nation is a "food desert" for affordable, nutritious food. The dam is part of the chapter's effort to create a locally available source of food. She said that the chapter already has a grant from the U.S. Department of Agriculture's (USDA's) Natural Resources Conservation Service (NRCS) for farming education. The NRCS grant is part of a tri-county effort in San Juan, Cibola and McKinley counties to reestablish local community gardens. However, providing irrigation water will be challenging, as the Navajo Nation has a six-year waiting list for feasibility studies. A committee member suggested that the chapter seek assistance from the USDA's Farm Services Administration (FSA) as well, reporting that the FSA's \$16 million set-aside for Native American communities is being underutilized.

Shiprock Irrigation System

Marlin Saggboy, irrigation supervisor, Shiprock Irrigation Project (SHIP), presented a \$448,808 funding request for the purchase of heavy equipment for irrigation system maintenance.

The SHIP serves 1,000 farmers along the San Juan River. (Full project description is in the committee meeting file.)

A committee member noted that funding for capital outlay projects will be challenging for FY 2017.

Native American High School Dual Credit Program

Randy Pacheco, dean, School of Energy, San Juan College (SJC); Tony Otero, coordinator, School of Energy, SJC; and Terry Dayish, senior consultant, governmental affairs, Arizona Public Service Company (APS), presented a request for funding to expand an industrial maintenance education program. (Details of the funding request are in the handouts in the committee meeting file.) Navajo Technical University (NTU), APS and SJC are partners in sponsoring a program wherein high school students receive training for jobs in the electric power industry and earn college credits. The program started in 2012 and currently has 12 students, but the sponsors would like to expand the program to 48 students over the next five years.

Mr. Dayish said the program was necessary because the industry has changed. Jobs that used to be available to high school graduates now require at least an associate's degree. Mr. Otero said the program has 20 instructors who are working in the industry. Participating students can receive a program certificate and an associate's degree in applied sciences. He said the program has a 90% graduation rate and 85% to 90% of the graduates are being hired locally at starting salaries ranging from \$40,000 to \$50,000 per year. After five years, a graduate can earn as much as \$100,000 per year.

Mr. Pacheco said the program is currently hosted at the Four Corners Power Plant and focuses on jobs in oil and gas power production and the mining industries. SJC has the second-highest number of degrees offered to Native American students in the country, but Mr. Pacheco believes it can become number one. The program is receiving interest from other states, and the sponsors would like to expand the training into the Navajo chapters. The goal for the dual credit/industrial training program is to build it into a bachelor's of applied science (B.A.S.) degree program. The projected costs to expand the program are \$960,000 over five years. The up-front costs to install a modular classroom with equipment and establish a B.A.S. degree program will require nearly one-half of the five-year total. The first year request is for \$442,000.

Responding to committee questions, Mr. Pacheco said that the program is reaching out to the Aztec, Bloomfield and Farmington school systems to become future program partners. Currently, APS provides the classroom, the Central Consolidated School District (CCSD) provides classroom equipment and student transportation from Kirtland and Shiprock and NTU develops the curriculum and certification program. While training is offered on a variety of equipment, including turbines and generators, the partners are not trying to duplicate other programs already offered. For example, he said that Santa Fe Community College has a good program in renewable energy, so they chose not to offer that.

The committee recessed at 4:15 p.m.

Tuesday, November 10 — State Capitol, Room 322

Call to Order

Representative Clahchischilliage called the meeting to order at 10:08 a.m. and asked the committee members to introduce themselves, which they did.

Proposed Legislation

Mr. Kovnat presented five pieces of legislation submitted for committee endorsement.

#1 — Joint Memorial: Protection of Cultural Property, discussion draft .202320.2

Mr. Kovnat said that he had followed up with Ann Berkley Rodgers, attorney, Pueblo of Acoma, and Pinu'u Stout, director, Natural Resources Department, Pueblo of San Felipe. State law is broader than federal law with regard to protection of cultural items, and while federal protection is limited to tribal properties under the federal Native American Graves Protection and Repatriation Act, state law includes items of non-native origin.

Motion

The committee unanimously approved a motion by Representative Smith, seconded by Senator Martinez, to endorse the legislation. Representative Smith will be the sponsor in the house of representatives, with Senator Cisneros taking the lead in the senate.

#2 — Appropriation: \$372,000 for Services Provided to Urban Indians in Santa Fe and Albuquerque, discussion draft .202317.1

Motion

The committee unanimously approved a motion by Senator Martinez, seconded by Representative Smith, to endorse the legislation. Senator Martinez will be the sponsor.

#3 — Joint Resolution: Constitutional Amendment to Allow State Funding of Tribal Colleges, discussion draft .202270.3

Motion

The committee unanimously approved a motion by Representative Smith, seconded by Representative Madalena, to endorse the legislation. Representative Clahchischilliage will be the sponsor.

#4 — Appropriation: \$6 million for the Navajo Water Gallup Supply Project, discussion draft .202399.1

Motion

The committee unanimously approved a motion by Senator Pinto, seconded by Representative Smith, to endorse the legislation. Representative Lundstrom will be the sponsor.

#5 — School Districts Transportation Boundary Agreements, discussion draft .202402.1

Mr. Kovnat said that this bill would require the Public Education Department (PED) to step in to resolve student busing disputes between school districts. Currently, there is a departmental rule that allows, but does not require, the PED to resolve these disputes. The committee noted that a letter requesting a message from the governor would be needed.

Motion

Without objection, the committee accepted a motion by Representative Madalena, seconded by Representative Smith, to amend the bill to remove the limitations on what would justify a transportation boundary agreement.

Motion

The committee unanimously approved a motion by Representative Smith, seconded by Representative Madalena, to endorse the legislation as amended. Senator Munoz will be the sponsor in the senate, and Representative Johnson will be the primary co-sponsor in the house.

Representative Clahchischilliage informed the committee that she and Senator Pinto would be co-sponsoring a joint memorial requested by Diné College and would contact the rest of the committee when it is ready.

Update on School Bus Transportation Issues

Representative Clahchischilliage noted that this item was a continuation of the committee discussion in a meeting in Gallup earlier in the interim regarding who pays for, and has jurisdiction for, students that cross the Arizona-New Mexico state line to attend school.

Latifah Phillips, assistant secretary of Indian education, PED, said that her office is working on a draft memorandum of understanding (MOU) between districts. When the draft is ready, the PED will send it to the Arizona school districts for review. She said the PED is confident that a cross-border agreement for the 2016-2017 school year can be reached among the various school districts. Nadine Groenig, director of Indian education, Arizona Department of Education, said a draft local MOU was provided to the committee as a handout.

Dr. Colleen W. Bowman, interim superintendent, CCSD, said her district is working on cross-county issues between San Juan and McKinley counties. She said there has been a history of parents sending their children to Gallup for school despite living within the boundaries of the CCSD. She said that 21 students this year are cross-county students, nine of whom ride the bus. To resolve the issue, the districts need to acknowledge parental choice. Given that they have no

evidence of children coming from the Gallup district to the CCSD, she said the children are likely traveling to be in school in the area where their parents work.

Carmen Moffet, interim superintendent, Gallup-McKinley County School District (GMCS), said that some students are traveling between Navajo chapters for school, citing Naschitti to Tohatchi as an example. The GMCS has a turnaround bus stop at the county line where students are dropped off and from there they need to walk or get a ride home. Superintendent Moffet hoped the Navajo Nation Division of Transportation (NDOT) would agree to provide transportation for these students from the county line to their home chapters.

R. Barry Williams, superintendent, Apache County School District, Arizona, said he was very encouraged by these most recent discussions and he welcomed the report on a local MOU, but said that it is an interim measure. The issue extends through many Navajo chapters up and down the state border and needs a broad, long-term solution. He said the governing factors for an agreement should be: 1) a school's proximity to a student's home; 2) the transportation needs of the student's family (e.g., where the parents work); and 3) most importantly, the safety of the student.

Lynette Michulski, superintendent, Window Rock Unified School District, Arizona, said the district is currently reviewing the draft MOU, and the initial reaction was encouraging.

Lee Zhonnie, president, Red Valley (Arizona) Chapter, said that Red Valley has a high school located right on the state line with a surrounding community on both sides. He said a big issue is how federal funds are paid to the school, and the chapter is being penalized because of cross-border accounting disputes.

Cindy Theodore, transportation coordinator, CCSD, said that the district transports 4,300 students daily over 4,500 miles. She said that transportation funding is not keeping up with the wear and tear on the buses. Five buses were scheduled for replacement this year, but funding was only available for one. Two bus routes continue to be served by buses that are over 12 years old, which violates PED regulations. However, she questioned the viability of a 12-year expectation, as the bus routes for the CCSD are long mileage routes.

Jeffery Bond, transportation coordinator, GMCS, said the border issue is not the only student transportation challenge. School district boundaries are also an issue. The GMCS is a huge district, and many of the district's buses have over 200,000 miles on them. He said 10 buses needed to be replaced this year, but the district was only able to replace five. Last year, 12 needed replacement but only five were replaced, so the district is running behind. Other challenges include a shortage of qualified bus drivers, which reduces routes and road conditions. Mr. Bond said that these challenges contribute to longer commute times for students. He said that the GMCS had an agreement with Cibola County, but it needs to reach agreements with San Juan and Sandoval counties.

Delegate Krotty said that the issue needs to be resolved because children from cross-border communities end up excluded from their neighbors when they cannot attend the same schools. She said this has adverse effects on students. Mel Begay, delegate, Navajo Nation Council, said that a typical school day lasts until 4:00 p.m., and if a student is bused to the county line and then must walk three to six miles to get home, the student is likely to be walking after dark during the winter months. He said that cuts into the productivity of a child's critical school years.

Priscilla Manuelito and Kevin Mitchell, school board members, GMCSD, said they are glad to be working through the issue with the CCSD. The issue has been a source of controversy for a couple of years, but the focus needs to be on the schoolchildren.

Albert Paul, resident, Beclabito Chapter, Navajo Nation, said the same issue exists between the CCSD and Aztec Municipal School District.

Committee members asked for an update on bridge and road problems. Mr. Bond said it is still a major challenge. Over 100 bridges within the GMCSD are rated for 10 tons or less; however, an empty school bus weighs 10 tons and a full one can weigh up to 15 tons. The district is trying to acquire smaller buses, but having fewer students per bus creates other problems. Repair work for both the bridges and the roads in the district is complicated because of jurisdiction over rights of way. Some stretches of road on allottee land require multiple permissions. In addition, if a bus cannot cross a bridge, larger emergency vehicles would also be prohibited. Most of the bridges are World War II Army surplus bridges, and no one has evaluated the support substructure for them.

Turning to the cross-boundary busing issue, committee members asked: 1) whether a local MOU would be sufficient or if a state-level intergovernmental agreement (IGA) would be needed; and 2) if the parties involved could set a schedule to resolve the issue before the second semester of the 2015-2016 school year.

Responding to the committee's desire to resolve the issue before the spring semester, Ms. Phillips agreed that the PED would host a follow-up meeting before the end of the year and invite the committee members as well as the school districts.

Ensuring Usable and Safe School Bus Routes: Questions of Jurisdiction and Rights of Way

Representative Clahchischilliage started the discussion by saying that this agenda item was a follow-up to discussion at the committee's meeting in Mitten Rock. At that meeting, San Juan County Commissioner Wallace Charlie noted that ownership of the rights of way is an obstacle to having the county perform road maintenance and repair on reservation land because of the Constitution of New Mexico's Anti-Donation Clause and ownership of the rights of way.

Dave Keck, public works administrator, San Juan County, said the county faced four challenges to working on roads on the Navajo Nation:

- 1) a lack of funding; the county has no tax base on the nation;
- 2) working without a right of way may equal "trespassing" and getting permissions can be very complicated;
- 3) concerns about the Anti-Donation Clause; and
- 4) questions about sovereign immunity and jurisdiction for lawsuits.

Mr. Keck said San Juan County has an informal agreement with the BIA to take care of roads in the checkerboard area, but never has had a formal written agreement. The county helps maintain some 400 miles of roads; however, without a formal agreement, it could be asked to abandon those roads. The county does have an IGA with the NDOT to construct or maintain some roads, which has worked well to replace some bridges and to improve gravel roads in the Shiprock area.

Doug Decker, county attorney, McKinley County, said the legal obstacle to county work on reservation land is not the Anti-Donation Clause, but a possible "takings" challenge. Without a right of way, a county could be considered a trespasser. He said McKinley County has 335 miles of existing roadway without any express right of way. Normally, these roads would be considered adversely possessed by the county, but adverse possession is not viable against a sovereign nation. These are BIA federal lands and cannot be adversely possessed. The complication is that several decades ago, the BIA subdivided the land and allotted the subdivisions to individual residents. Now those allottees are considered to be private landowners who must give permission for road work.

Mr. Decker used the washout of the Manuelito Canyon bridge as a example of the problem. The bridge was washed out in 2010, and the county received federal disaster funding to fix it, but the work has been held up for five years because not all of the 696 allottees on this stretch of road have given their permission. The county is on its thirteenth extension to use the federal funding, but a solution may be possible if the local Navajo chapter accepts the responsibility for the right-of-way issue. McKinley County has had success working on roads when local chapters take a lead in the process.

Darryl Bradley, P.E., acting division director, NDOT, spoke to the necessity of collaboration between the Navajo Nation and the counties. He said that the number of road miles within the Navajo Nation overwhelms the NDOT's maintenance budget. Working with the counties extends the work that is able to be done.

In conclusion, Mr. Decker indicated that the county's goal is to get the roads fixed. He said a solution would be for the state to allow funding to be used on roads that do not have express rights of way.

Motion

On a motion by Representative Smith, seconded by Senator Martinez, the committee approved the minutes of the November 2, 2015 meeting without objection.

Adjournment

The committee adjourned at 4:26 p.m.